

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

ALBERT GRANT,

Defendant-Appellee.

UNPUBLISHED

June 2, 2000

No. 222028

Wayne Circuit Court

Criminal Division

LC No. 99-004776

Before: Hoekstra, P.J., and Holbrook, Jr., and Zahra, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant's motion to quash the information, and dismissing the case. We reverse and remand for further proceedings. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was charged with carrying a pistol in a motor vehicle, MCL 750.227(2); MSA 28.424(2). The evidence produced at the preliminary examination showed that police stopped the vehicle in which defendant was a passenger. The officer who approached the vehicle on the passenger side observed defendant repeatedly reaching down with his left hand. Defendant did not comply with instructions to keep his hands visible at all times. Defendant and the driver were instructed to exit the vehicle. As defendant stepped out of the vehicle, the officer observed an automatic pistol against the passenger side of the center console. The pistol was located in the area to which defendant had repeatedly moved his left hand.

The district court bound defendant over as charged, finding that a question of fact existed as to whether he was carrying the pistol. The trial court granted defendant's motion to quash the information and dismissed the case without prejudice, finding that it was "a little bit less than probable" that defendant carried the pistol.

The purpose of a preliminary examination is to determine if probable cause exists to believe that a crime was committed and that the defendant committed it. *People v Fiedler*, 194 Mich App 682, 689; 487 NW2d 831 (1992); MCL 766.13; MSA 28.931; MCR 6.110(E). During a preliminary

examination, the prosecution must produce evidence of each element of the crime charged, or evidence from which the elements can be inferred. *People v Hill*, 433 Mich 464, 469; 446 NW2d 140 (1989).

The elements of carrying a pistol in a motor vehicle are: (1) that the pistol was in a vehicle occupied by the defendant; (2) that the defendant knew that the pistol was in the vehicle; and (3) that the defendant took part in carrying or keeping the pistol in the vehicle. *People v Nimeth*, 236 Mich App 616, 622; 601 NW2d 393 (1999). The element of “carrying” is distinct from knowledge of the weapon’s presence in the vehicle, and does not automatically follow from proof of knowledge. *People v Butler*, 413 Mich 377, 385-386; 319 NW2d 540 (1982); *People v Courier*, 122 Mich App 88, 90; 332 NW2d 421 (1982).

Plaintiff argues that the trial court erred by granting the motion to quash, and dismissing the case. We agree, reverse the trial court’s decision, and remand for further proceedings. The evidence produced at the preliminary examination established that a pistol was found in the vehicle in which defendant was a passenger. The pistol was positioned such that it would have been located between defendant’s left leg and the vehicle’s center console when defendant was sitting in the vehicle. That was the area to which the officer observed defendant reach repeatedly with his left hand. The evidence that defendant repeatedly reached into the exact area in which the pistol was located supported an inference that defendant knew that the pistol was located in that spot. The evidence that the pistol was located in a spot readily accessible to defendant but not to the driver, and that defendant repeatedly reached to that spot, notwithstanding the fact that he was told to not do so, supported an inference that defendant was carrying the pistol. *Butler, supra*. The prosecution presented evidence of each element of the offense, or evidence from which each element could be inferred. *Hill, supra*. That the evidence produced might have raised a reasonable doubt as to whether defendant was carrying the pistol did not support a dismissal of the case. Such questions are to be left for the jury. *People v Doss*, 406 Mich 90, 103; 276 NW2d 9 (1979). The trial court erred by granting defendant’s motion to quash the information. *People v Orzame*, 224 Mich App 551, 557; 570 NW2d 118 (1997).

The trial court’s order quashing the information and dismissing the case is reversed, and this case is remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Joel P. Hoekstra

/s/ Donald E. Holbrook, Jr.

/s/ Brian K. Zahra